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UNCLAS SECTION 01 OF 08 BEIJING 002566

SIPDIS

State for EAP/CM - JYamomoto and EB/IPE - EFelsing

USTR for China Office - AWinter; IPR Office - RBae; and OCG
- SMcCoy, ACelico

Commerce for National Coordinator for IPR Enforcement -
CIsrael

Commerce for MAC 3204/LRigoli, ESzymanski

Commerce for MAC 3043/McQueen

LOC/Copyright Office - MPoor

USPTO for Int'l Affairs - LBoland, EWu

DOJ for CCIPS - Asharrin
DOJ for SChembtob
FTC for Blumenthal
FBI for LBryant

DHS/ICE for IPR Center - DFaulconer

DHS/CBP for IPR Rights Branch - PPizzeck

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [WTRO](#) [CH](#)

SUBJECT: USTR CONCLUDES PROVINCIAL IPR REVIEW IN BEIJING

REF: Beijing 02455

Summary

¶1. (U) USTR Chief Negotiator for Intellectual Property (IP) Enforcement Stanford McCoy and USTR Senior Director for China Affairs Amy Celico visited Beijing on March 16 to conclude a series of provincial review meetings in several Chinese cities. They discussed Internet copyright issues at the Beijing Copyright Bureau; raised IP enforcement in local markets with the Chaoyang District of Beijing municipal government (which denied serious problems at the notorious Silk Market); discussed university textbook piracy at the Ministry of Education; and covered general IP enforcement with the Ministry of Commerce. End Summary.

Online Copyright Enforcement

12. (U) USTR Chief Negotiator for Intellectual Property Enforcement Stanford McCoy and Senior Director for China Affairs Amy Celico (collectively, "USTR"), Embassy Senior IPR Attache Mark Cohen, and Econoff met with Beijing Copyright Bureau (BCB) Director Wang Yefei, Copyright Department Director Feng Xiansheng, and Deputy Director Chen Xiaohong on March 16. Wang told USTR that Beijing started to focus on Internet-related intellectual property (IP) enforcement in August 2006 with the launch of IP education and public awareness programs, which included a project to educate businesses about legal software use. Wang stated that all of Beijing's copyright initiatives have the support of Beijing Mayor Wang Qishan, who wrote the preface of the Bureau's "Software Copyright Protection Manual," published recently with the support of Microsoft Corporation and the Business Software Alliance. Wang further stated that, through BCB's efforts, Beijing Municipality has extended its government software legalization efforts from the central municipal government to all township and government agencies.

Difficulty Prosecuting Online Cases

13. (U) Wang explained that some cases of Internet copyright infringement have been successfully transferred from the BCB to the Public Security Bureau (PSB) for criminal investigation, trial, and conviction. However, he expressed concern that evidence in such cases is difficult

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to collect and, as a result, suspects who infringe copyrights are often ultimately convicted for illegal business operations because prosecutors lack sufficient evidence of IP infringement. To help in prosecuting Internet copyright cases, the BCB in January launched a pilot program to use an electronic watermarking system to register and protect digital images. In a separate discussion with Senior IPR Attache, Wang also noted that his office has been tasked by the Beijing Municipal Government to address the problem of Internet webcasting or rebroadcasting of the Olympics, including drafting of a possible special rule addressing this issue for the government.

14. (U) The Beijing Copyright Bureau regulates all requests from rights holders for the removal of infringing material on the Internet. Wang admitted that the procedures for take-down notification are only one year old and still in development, and said that the BCB is concerned that the system will be overwhelmed by the large number of parties (rights holders, law firms, representatives, and others) filing take-down notices. He said the BCB is also concerned about which notices are legitimate and which are sent by unauthorized parties, and is working with rights holders to clarify this process. USTR responded that rights holders often settle on their own in the United States, and therefore the take-down system only involves the government in the very small percentage of cases that require judicial intervention. UST added that associations often act on rights holders' behalf outside of the United States, and should continue to be allowed to file notices in China.

15. (U) Wang stated that while Internet service providers (ISPs) often respond to take-down notices by removing links to illegal content quickly, the content remains resident on the servers of Internet content providers (ICPs), who host the illegal files. As the number both of illegal files and ICPs grows, Wang said the BCB faces difficulties regulating them, particularly with respect to film and music downloads. USTR responded with the recommendation to work closely with industry to better understand the challenges they face in

the area of illegal content.

¶6. (U) In response to USTR's inquiry about the "deep linking" case brought against Yahoo China by the music industry in January 2007, Wang said that the BCB hosted a workshop in February to discuss this and similar cases with judges. He said that the opinion of the judges was that the prosecutors in the case were "not professional enough," in that they faced difficulties establishing sufficient evidence. Wang said such cases are very difficult to

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prosecute, and suggested that the lawyers bring charges that are easier to prove, including civil infringement for the right to communicate over information networks, as defined in recently issued regulations, and others.

¶7. (U) Wang indicated his interest in seeing IPR cases prosecuted in a special division of the civil courts, making more resources available for such cases. He noted that Beijing recently established several basic level IPR civil courts, which provide additional convenience to right holders seeking to litigate their cases. He added that the Chinese Government is still learning to establish legal systems that adequately address IPR issues, and he noted, in response to a comment by Senior IPR Attache, that at least the chief judge of the Supreme People's Court civil IPR tribunal, Jiang Zhipei, supported such a move. (Note: The increasing trend towards basic level civil IPR courts is of little help to foreigners, who must litigate their cases in intermediate courts. Furthermore, such basic level courts may be more closely tied to local economic interests. In general, the United States Government has supported the creation of either an integrated IPR court that combines civil, criminal, and administrative jurisdiction or a national appellate IPR court that permits litigants to immediately appeal a case in a jurisdiction that is less tied to local influence. Emboffs subsequently met with Supreme People's Court Deputy President Zhang Jun on March 28. While Zhang agrees there is benefit in establishing a unified IPR court in China, he said it will not happen until after a broad-based reform of China's judicial system as well as its IPR laws as a whole. Zhang noted that in the event such a court were established, Judge Jiang Zhipei would likely serve as its chief judge, and he therefore naturally supports the move. See Reftel. End Note.)

Infringement at Universities

¶8. (U) Asked about copyright infringement at universities, Wang replied that many universities use foreign textbooks, which are subject to illegal copying and distribution because of their relatively high cost. However, he said that universities receive "no safe harbor" from IPR laws, and said that the BCB plans to meet with 56 Beijing-area university presidents to discuss the problem. On the issue of proliferating online piracy over broadband Internet connections at universities, Wang said that the problem is still relatively new, and that BCB is developing a black list of known infringing web sites that have not yet been shut down. In response to a question of the Senior IPR

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Attache, Wang noted that he was unaware of any specific university policies governing usage of the Internet to minimize infringement activities. USTR recommended that BCB employ more transparent reporting of any IPR enforcement actions, since such publicity would give China more credit abroad for its efforts, and would help to deter pirates.

Strategies for Enforcement in Counterfeit Markets

¶9. (U) In a meeting with Chaoyang District Vice Governor Xie Chaobin, Director Liu Chuncheng, and Deputy Directors Zhang Yong and Zhang Guohua, the Chinese side told USTR that Beijing's Central Business District plays an important role in the development of the capital and the country, especially with the impending 2008 Olympic Games, and that IPR enforcement is central to the district's continued development. Xie said the government is "involving more social forces" in protecting IPR, and explained that the government relies heavily on the management companies at Chaoyang's notorious counterfeit markets to enforce IPR protection. For example, he said that all management companies now require vendors selling trademarked brands to report their suppliers to Chaoyang's Cultural Authority for certification, and that revocation of that certification also results in the revocation of a vendor's business license, thus avoiding the quick revival of illegal businesses.

¶10. (U) Xie said that, based on meetings with industry associations, rights holders are satisfied with IPR protection measures and enforcement actions taken in Beijing's markets. He added that the Chaoyang government signed a memorandum of understanding (MOU) with the American Chamber of Commerce (AmCham) in October 2006 that will create a better environment for legitimate goods and will increase public awareness of the counterfeit problem. Xie said that this strategy, combined with targeted law enforcement activities, is the keys to IPR enforcement. He added that Chaoyang government officials would like to visit the United States in 2007 to exchange experiences on enforcement, further to a recent exchange with local law enforcement from the United States. Also through the MOU with AmCham, Xie reported that the Chaoyang government meets monthly with an IPR working group to exchange ideas and the results of piracy cases, enhance law enforcement and monitoring efforts, hold workshops and seminars, and create campaigns to educate sellers and buyers, particularly younger buyers. He added that education programs have to date included a visit to Microsoft and to

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Taiwan movie studios.

Chaoyang Challenges Silk Street Allegations

¶11. (U) USTR asked Chaoyang government officials what more the United States and China must do to cooperatively manage the problem at Silk Street Market, the "world's most famous market" for counterfeit goods. Liu interrupted the interpreter to note that "the embassy did not provide us with this question [in advance]." He continued to say that those familiar with the market's history will have a more objective view of recent progress in enforcement, and that those who "pay more attention to recent litigations" and cooperation with the EU will have a better understanding of the situation. USTR cited recent industry data showing that, in some categories, up to 80-90% of goods at Silk Street are counterfeits. The Chinese side challenged those figures and requested that such data be shared, asserting that rights holders are pleased with the situation at the market. (Note: Director Liu referred in particular to a widely reported incident in which a European lawyer, who is also counsel to two companies concerned about infringement at the Silk Market and who chairs European Chamber's IPR Committee, entered into a separate agreement with the Silk Market to settle his clients' civil litigation. The signing ceremony was widely reported in the media as an indication of European "satisfaction" with IP enforcement at Silk Market. Emboffs were advised by rights holders'

counsel not to attend this meeting, lest it be used for propaganda purposes, and therefore declined to participate. End Note).

¶12. (U) Director Liu said that data on high rates of counterfeit products at local markets is "forced" by intermediaries who profit from IPR cases, and stated that Chaoyang district has never relied on the sale of counterfeit goods for economic development. USTR suggested that both sides acknowledge frankly the situation at the market and work constructively to address it, to which Liu replied by encouraging USTR to visit Silk Street Market, and expressed his hope to work together in the future based on real data. Vice Governor Xie added that Chaoyang district is firmly determined to fighting piracy and that, as WTO members, China assures that all rights holders receive the same treatment as domestic rights holders. He said that he hopes to promote future discussion and avoid misunderstandings.

Online and Textbook Piracy at Universities

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¶13. (U) In a meeting with the Ministry of Education's Department of International Exchanges, Assistant Director General Xu Yongji told USTR that, especially since 2000, Chinese universities have increasingly begun to use foreign textbooks. In such cases, the Ministry of Education requests that the books be licensed for publishing in China to reduce the cost to students. He said there are nine presses in China that print such licensed foreign books, with a total of more than 6,000 foreign textbooks in print in China today, amounting to several hundred million RMB in royalties.

¶14. (U) Xu said that the Ministry of Education currently monitors copyright compliance at universities, and stipulates measures, available online, for schools to follow. However, enforcement responsibility falls to the National Copyright Administration, which worked together with the Ministry of Education from August to September 2006 to punish textbook infringers, and will collaborate longer term to establish mechanisms to fight piracy.

MOFCOM's IPR Enforcement Strategies

¶15. (U) USTR also met with on March 16 with the Ministry of Commerce (MOFCOM) Market Order Rectification Office (MORO), including China International Electronic Commerce Center (CIECC) Vice Director Wang Kaiqian, IPR Affairs Vice General Manager An Ning, and State Office of IP Protection Division Director Qiu Zhongyi. USTR provided MOFCOM with a summary of provincial review activities and findings, covering athletic shoe counterfeiting, Internet and book piracy, IPR complaint centers, and discussion of Silk Market with Chaoyang District Government. Vice General Manager An expressed MOFCOM's appreciation for USTR's observations on IPR and cited recent examples of IPR enforcement and the establishment of 50 nationwide IPR complaint centers, which he noted are consistent with MOFCOM's principle to consistently promote IPR issues at all levels of government.

¶16. (U) Asked about the existence of a rewards system for IPR enforcement, MOFCOM replied that different enforcement and administrative systems exist for trademarks, copyrights, and patents, and that rewards and punishments, including rewards for case transfer, are part of each. However, MOFCOM noted that there is no central system for evaluating and rewarding IPR enforcement. Asked what incentives have been added since 2006 for increased case transfer, MOFCOM

reported that four new rules have been made, and a monitoring system established. The two problems they report to face are evidence collection and cooperation with rights holders.

¶17. (U) All IPR enforcement actions are reported on the CIECC website, and MOFCOM said that 20 percent of visitors to the site in February 2007 were from the United States, indicating that it has become a valuable tool to foreign rights holders. United States visitors represented the largest proportion of foreign visitors to the site. USTR pointed out that very little information is available online, leaving rights holders uncertain whether their particular case has been dealt with or not, and that publishing so little information may reduce the deterrent effect. USTR suggested releasing more information about take-down actions, in compliance with Chinese law. MOFCOM replied that this has to do with confidentiality of rights holders. USTR pointed out that following a March 2006 conversation about transparency, MOFCOM had not yet made available enforcement statistics for 2006.

Comment

¶18. (SBU) USTR's provincial review meetings in China, which were held prior to the April 10 WTO filings by USTR, were largely granted at the last minute and only after considerable direct intervention by the Embassy. To arrange the meetings, Emboffs told MOFCOM that if China wanted an objective report in USTR's provincial review, it should either support USTR's visits to local governments, or at least refrain from interfering with them. In response, MOFCOM denied any interference; however, Chinese agencies did not grant any requested meetings until MOFCOM stopped "not interfering." With the April 10 filing of the WTO dispute resolution cases on Chinese IPR-related matters (enforcement and market access), Chinese officials have repeatedly noted in various fora that all bilateral cooperation on IPR issues between the United States and China is henceforth suspended, which casts considerable doubt on the ease with which such meetings may be arranged in the future.

¶19. (SBU) Despite recent WTO fallout, however, USTR's March meetings in Beijing demonstrated the effectiveness of continued engagement with local officials to build relationships and trust to support better IPR enforcement. Emboffs have met with BCB dozens of times and have sponsored several joint programs together. In a prior meeting with Emboffs, the BCB even confided their own

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initial disbelief when first advised by Emboffs that Internet copyright piracy was a problem in China. Now, however, they say they are fully engaged on the issue. Similarly, Emboffs attended several bilateral meetings with CIECC before it established its now popular online IPR complaint mechanism. Vice Director Wang Kaiqian has credited advice from Emboffs about how to make the site more user-friendly and useful to foreigners with the site's recent dramatic increase in foreign users.

¶20. (SBU) Continuing local engagement remains especially critical in the post-WTO case world. The Embassy was pleased to nominate and send a delegation of four Chinese Internet copyright enforcement officials to the United States on an International Visitors Program in March and April 2007. The visitors were hosted by USTR and other agencies, and are now planning a number of technical assistance programs with the CIECC, which the Embassy hopes

will survive the high profile public rhetoric of
disappointment and anger from the Chinese Government. End
Comment.

[1](#)21. (U) This report was cleared by USTR.

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